

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1800 of 2026

Prayagadhvaj Yadav @ Prayag S/o Raj Kishor Yadav, R/o Village House No. 48, Barwan Bazar, PO Sekhwaniya, PS Kasiya, Distt Kushinagar, UP. Present Address- A-7/C3, IIT Delhi, Hauz khas, PS - Kisangarh, PO - IIT, District - South Delhi, New Delhi 110016.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The District Magistrate, Kaimur at Bhabhua.
3. The Superintendent of Excise Department, Kaimur at Bhabhua.
4. The Officer In-Charge, Durgawati Excise Police Station, Bhabhua, District Kaimur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Abhigyan Kumar, Adv.
Mr. Saurabh Yadav, Adv. (appearing virtually)
For the State : Mr. Prashant Pratap, GP-2

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 30-03-2026

Heard the Ld. Counsel for the petitioner, who is appearing through video conferencing and the Ld. Counsel for the State.

2. The present writ petition has been filed for quashing the order dated 1.7.2025, passed by the Ld. Court of Sub-Divisional Magistrate, Mohania (Kaimur) in Excise (Vehicle Confiscation)



Case No. 24/2025, whereby and whereunder the vehicle in question i.e. the one bearing Registration No. UP57BH7128, Chassis No. MALFB81BLNM386671 and Engine No. G4LANM304200 has been confiscated and directed to be auction sold in connection with Durgawati P.S. Case No. 169/24 dated 21.6.2024, registered under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018 (hereinafter referred to as the “Amendment Act, 2018”) on account of recovery of 350.250 liters of illicit liquor from the said vehicle, i.e white colour Hyundai Company Venue Car.

3. The brief facts of the case, as per the complaint lodged by the Sub-Inspector of Police, Durgawati Police Station (hereinafter referred to as “the informant”) with the Inspector of Police-cum-Officer-in-Charge, Durgawati Police Station is that on 21.6.2024 at about 9:00 hours he received secret information, while he was at the police station, to the effect that on the road towards the northern side of village Khuthan, one white colour Hyundai Company Venue Car is parked in which illicit liquor has been kept. The informant along with the police force had then proceeded to the said place of occurrence by a Government vehicle and upon reaching the said place, he found that one white colour Hyundai Company Venue Car was standing on the



road and all the four doors of the said car were closed. Thereafter, in presence of two police personnel, search of the said vehicle was made and 350.250 liters of illicit liquor was recovered from the said vehicle. In fact, from the said car, a copy of registration certificate of the said car was also recovered in which the name of the petitioner was mentioned as the owner of the said vehicle along with his address. Thereafter, the said car along with the illicit liquor was seized and the seizure list was prepared, whereupon the aforesaid FIR bearing Durgawati P.S. Case No. 169/24 was registered.

4. The learned counsel for the petitioner, who is connected online by means of video conferencing facility, has submitted that the petitioner has purchased the aforesaid vehicle in question on loan and he had been paying monthly EMI of Rs. 15,758/- since 01.12.2022, which has finally been paid and settled on 01.11.2025. It is submitted that in order to meet out the financial burden of EMI, the petitioner started using Zoom Car Application for the purposes of renting out his car and prior to the said incident, he had rented out his car twice. On the present occasion, one Mr. Farukdin had approached through Zoom Car Application for taking the vehicle in question on rent, whereafter the petitioner had given the vehicle in question to the



said Mr. Farukdin, after taking his Aadhar card, PAN card, photo copy of the driving license etc. and entering into a rental agreement dated 18.06.2024. Thereafter, the petitioner got to know that his car has been seized in connection with the aforesaid Durgawati P.S. Case No. 169/24 on account of recovery of illicit liquor from the said car.

5. The learned counsel for the petitioner has submitted that the petitioner had called Mr. Farukdin on 22.6.2024 to know about the status of his location and time of returning the car, however on account of the said Mr. Farukdin having misbehaved with the petitioner and not returned the car, the petitioner had approached the police station- Kishangarh, Delhi to lodge a complaint case against Mr. Farukdin on 22.6.2024 pertaining to the customer not returning his car, however the petitioner was told by the police personnel at the police station- Kishangar, Delhi that his car has been seized in connection with Durgawati P.S. Case No. 169/2024.

6. The learned counsel for the petitioner has next submitted that nobody was apprehended from the place of occurrence from where the car was seized, hence the same casts a doubt regarding the process of seizure and the seizure memo does not inspire any confidence. The learned counsel for the petitioner



has tried to impress upon this Court that though the petitioner had approached the learned Court of Sub-Divisional Magistrate, Mohania (Kaimur) for release of his vehicle in question, however the same has been denied in a mechanical manner by the impugned order dated 01.07.2025, however the petitioner does not intend to avail the alternative remedy available to him by way of challenging the said order dated 1.7.2025, by filing an appeal under Section 92 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the “Act, 2016”), inasmuch as the said remedy is not efficacious. Nonetheless, reliance has been placed on a judgment dated 16.5.2019, passed in CWJC No. 7612 of 2019 (*Rajesh Giri vs. The State of Bihar & Ors.*), as has been averred in paragraph no. 19 of the writ petition, to contend that in similar circumstances, the High Court has directed to release the seized vehicle. A bare perusal of the said judgment dated 16.5.2019 would show that a coordinate Bench of this Hon’ble Court had directed for release of the vehicle in question firstly on account of recovery of meager quantity of 540 ml Indian made foreign liquor and secondly subject to the writ petitioner furnishing two sureties (one local), to the extent of the value of the vehicle as indicated in the Insurance document. However, in the present case the learned counsel for



the petitioner has neither shown his willingness to adhere to appropriate conditions to be imposed for release of the seized vehicle nor any argument has been advanced by him to the said effect.

7. This Court upon having put a query to the learned counsel for the petitioner to the effect as to whether the petitioner would choose to avail the alternative remedy by way of preferring an Appeal, as provided for under Section 92 of the Act, 2016, in which case this Court would stay the auction of the vehicle in question, the answer is in the negative and it is submitted that orders be passed on merits.

8. *Per contra*, the learned counsel for the Respondents has submitted, by referring to the counter affidavit filed in the present case that the veracity of the story, as propounded by the petitioner in the writ petition is yet to be ascertained and the entire events do not inspire confidence, inasmuch as though the so-called rental agreement, pertaining to the car in question is dated 18.1.2024 and the said car was seized by the police on 21.6.2024 on account of recovery of 350.250 liters of illicit liquor, leading to lodging of Durgawati P.S. Case No. 169/2024, however the petitioner is stated to have approached the police station- Kishangarh, Delhi to lodge a complaint case against Mr.



Farukdin on 22.6.2024, where he was told by the police personnel that his car has been seized in connection with Durgawati P.S. Case No. 169/2024, nonetheless no FIR appears to have been registered. It is further submitted that it is not in dispute that 350.250 liters of illicit foreign liquor has been recovered from the vehicle in question and the petitioner is admittedly the registered owner of the said vehicle in question.

9. The learned counsel for the Respondents has next referred to Section 47 of the Act, 2016 to submit that it is not necessary for the owner of the vehicle in question to be present at the place of occurrence, however by virtue of Section 56 of the Bihar Prohibition & Excise (Amendment) Act, 2022 (hereinafter referred to as the “Amendment Act, 2022”), whenever an offence punishable under the Act, 2016/Amendment Act, 2018/Amendment Act, 2022 is committed, the Collector or an officer authorized by him may confiscate such items based on the report of the investigating officer and such items also includes vehicle used for transporting illicit liquor. Thus, it is submitted that since illicit liquor has been recovered from the vehicle in question, the same has been seized by the police in connection with Durgawati P.S. Case No. 169/2024, whereafter the vehicle in question has also been confiscated by the impugned order



dated 01.07.2025, passed by the Ld. Court of Sub-Divisional Magistrate, Mohania (Kaimur) in Excise (Vehicle Confiscation) Case No. 24/2025, in view of the provisions contained in Rule 12A(3) of the Bihar Prohibition and Excise (Amendment) Rules, 2022 (hereinafter referred to as the “Amendment Rules, 2022”), which is reproduced herein below:-

“12A(3). Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the confiscation of the said vehicle or conveyance and its subsequent auction/disposal.”

10. It is thus submitted by the learned counsel for the Respondents that since huge quantity of illicit liquor to the tune of 350.250 liters has been recovered in the present case from the vehicle in question, the Ld. Sub-Divisional Magistrate, Mohania (Kaimur) while passing the impugned order dated 01.07.2025 has rightly come to the conclusion that it would not be in public interest to release the vehicle in question, hence the vehicle in question has been confiscated and directed to be auction sold. It is however, submitted that the petitioner can file an appeal under Section 92 of the Act, 2016 against the order dated 01.07.2025, passed by the Ld. Court of Sub-Divisional Magistrate, Mohania



(Kaimur) in Excise (Vehicle Confiscation) Case No. 24/2025, where all the factual issues being raised by the petitioner in the present writ petition, regarding rental agreement etc. can be gone into and if so required, evidence can also be adduced by the petitioner and taken into account, however disputed question of facts cannot be adjudicated in a writ petition under Article 226 of the Constitution of India. Thus, the instant remedy being availed by the petitioner is not an efficacious remedy and the present writ petition is fit to be dismissed on the ground of the petitioner having not availed the efficacious, statutory and alternative remedy of filing appeal under Section 92 of the Act, 2016.

11. We have heard the learned counsel for the parties and gone through the materials on record from which it is apparent that it is not in dispute that the aforesaid vehicle in question was seized in connection with Durgawati P.S. Case No. 169/2024 on account of recovery of 350.250 liters of illicit liquor from the said car. At this juncture we deem it appropriate to refer to Section 30(a), 56 and 58 of the Amendment Act, 2018/ Amendment Act, 2022, which are reproduced herein below:-

“30- Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor-



Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued there under, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorisation granted thereunder -

(a). Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp; or.....

shall be punishable with imprisonment for the term which may extend to life and with fine which may extend to ten lakh rupees. Provided that the punishment:

(a) For the first offence shall not be less than five years imprisonment and fine of not less than one lakh rupees, and

(b) For the second and subsequent offences shall not be less than ten years rigorous imprisonment and fine of not less than five lakh rupees."

56. Confiscation of Seized Items.

(1) Notwithstanding anything contained in Section 57B, whenever an offence punishable under this Act, is committed, the Collector or an officer authorized by him may confiscate such items based on the report of the investigating officer.

(2) Such items may include

(i) any premises or part thereof;

(ii) any animal, vehicle, vessel or conveyance;

(iii) any liquor or intoxicant;

(iv) any other item having bearing with the case;

Provided, where things as mentioned in Section 57 are to be destroyed, then the Collector or an officer authorized by him need not confiscate the same before their destruction.



(3) The State Government may issue necessary direction, guidelines, regulations and instructions with respect to the mode and manner of search, seizure, destruction and confiscation.

58. Confiscation by District Collector-

(1). Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;

(2). On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property:

(3). The Collector shall, before passing an order under sub-section (2), give a reasonable opportunity to the person concerned, of being heard:

(4). While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of an Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub-Inspector;

(5). While making an order of confiscation under sub-section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by



public auction or dispose of departmentally and proceeds deposited with the State Government;

(6). The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation.”

12. Now coming back to the present case, we find that admittedly 350.250 liters of illicit liquor has been recovered from the vehicle in question, hence prima facie it cannot be said that no offence is made out under the provisions contained in Section 30(a) of the Amendment Act, 2018, inasmuch as illicit liquor was being transported in the said vehicle. Thus, as per the provision contained under Section 56 of the Amendment Act, 2022, whenever an offence punishable under the Amendment Act, 2018 is committed, the Collector or an officer authorized by him can confiscate any premises or part thereof, any animal, vehicle, vessel or conveyance, any liquor or intoxicant and any other item having bearing with the case. Now, the issue which arises for consideration is as to whether the vehicle in question is liable to be released or not. In this connection, we may gainfully reproduce Section 57B of the Amendment Act, 2022 herein below:-

“57B. Things or premises liable to be released upon penalty-

(1). Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act



that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(2). Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3). If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per Section-58.”

It would also be relevant to reproduce Rule 12A and Rule 13A of the Bihar Prohibition and Excise (Amendment) Rules, 2021 (hereinafter referred to as the “Rules, 2021”) as amended upto date, herein below:-

“12A. Release of Vehicles, Conveyance etc. on Payment of Penalty-

(1). If any vehicles, conveyance, vessel, animal etc. has been seized by any police or excise officer under the Act. then in terms of Section 57B (1) of the Act, the Collector or an officer authorized by him upon receipt of an application in Form IV by the owner of the said conveyance or vehicle etc., may release the said conveyance or vehicle upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.

Provided, where it is not possible to ascertain the owner of the vehicle or the owner is not coming to claim the vehicle, the Collector or the officer authorized by him, after waiting for 15 days from the date of seizure, shall proceed to confiscate and auction the vehicle as per the provisions of the Act.



(2). The amount of penalty shall be as decided by the Collector or the Officer authorized by him. While imposing the penalty, he shall have due regard to the quantity of intoxicant recovered, involvement of the vehicle owner and the latest insurance value of the vehicle. In no case, the penalty should be less than 10% of the insured value of the vehicle and more than Rs. 5 lakhs. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the Collector or the Officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation done by the District Transport Officer.

In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction.

(3). Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the confiscation of the said vehicle or conveyance and its subsequent auction/disposal.

(4). Where the conveyance is such that its valuation/insurance is not possible, the Collector or the officer authorized by him shall impose such fine as he deems fit. While imposing such fine, the Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime and the quantum of intoxicant recovered.

(5). Such penalty shall be, regardless of the outcome of the trial if any. before the Special Court, non-refundable.

(6). The owner of the vehicle/conveyance shall, after the release of the vehicle/conveyance, produce the vehicle/conveyance as and when required by the authorities.



13A. Procedure of confiscation of vehicle/conveyance etc-

(1). Where it is decided by the Collector that the vehicle is not to be released on penalty or where the owner does not pay the required penalty, the confiscation proceeding shall be initiated. The proposal for confiscation of the conveyance shall be sent by the police/excise officer to the Collector (or an officer authorized by him) within 30 days from the date of seizure. The officer concerned shall immediately start the confiscation proceeding.

In case of delay of beyond 30 days, in submission of the proposal of confiscation, the police/excise officer will have to explain the delay.

(2). The officer concerned, on receipt of proposal for confiscation of any vehicle(s) or other conveyances from police/excise officer, shall issue show cause notice to owner of the said vehicle or the vessel or other conveyance. Simultaneously, he shall issue notice to the District Transport Officer and the Chemical Examiner for their reports.

(3). Such notice issued by the officer shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons. He shall obtain report from the District Transport Officer or any authority authorized for the purpose of registration of the conveyance and the report of chemical examiner within 30 days of seizure.

(4). The officer shall provide reasonable opportunity of hearing to the owner. The investigating/inquiry officer shall also be given opportunity to participate in such hearing.

(5). If, on the date fixed for hearing, the person(s) to whom the notice has validly been served fail(s) to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order ex-parte.



(6). The officer, after hearing the parties, on satisfaction that an offence has been committed in terms of the Act, shall pass appropriate order with respect to seized vehicle or vessel or conveyance as the case may be.

(7). The officer shall ensure that the order for confiscation is passed within 90 days from the date of seizure of the vehicle.

(8). Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these Rules.”

13. Now coming back to the present case, we find that instead of releasing the vehicle in question, pursuant to an application made by the petitioner under Rule 12A(2) of the Rules, 2021, the Collector/ the officer authorized by him, i.e the Sub-Divisional Magistrate, Mohania (Kaimur), by the impugned order dated 01.07.2025, has upon considering the aforesaid provisions contained in the Bihar Prohibition and Excise Act/ Rules, deemed it fit and proper not to release the vehicle in question upon payment of penalty and instead has confiscated the vehicle in question, since he has considered it expedient in the public interest to do so on account of recovery of huge quantity of illicit liquor to the tune of 350.250 liters from the vehicle in question. We find that since the vehicle in question has already stood confiscated, the issue of release of vehicle, upon payment of penalty under Rule 12A(2) of the Rules, 2021 is no longer relevant, hence the appropriate remedy available to



the petitioner is to challenge the impugned order of confiscation of the vehicle in question dated 1.7.2025, passed by the Sub-Divisional Magistrate, Mohania (Kaimur) in Excise (Vehicle Confiscation) Case No. 24/2025, by filing appropriate appeal in terms of Section 92 of the Act, 2016, which is reproduced herein below:-

92. Appeals—

(1) All final orders passed by any Excise Officer other than the Excise Commissioner or Collector under this Act, shall be appealable to the Collector within sixty days from the date of the order.

(2) All final orders passed by the Collector and Excise Commissioner shall be appealable to the Excise Commissioner and the State Government respectively within 90 days from the date of the order complained of.

Provided that no second appeal shall lie against an order passed by the Excise Commissioner on appeal.

(3) The State Government may make rules in this behalf.

14. We further find from the materials on record that the petitioner has raised disputed question of facts, as has already been mentioned hereinabove in the preceding paragraphs, which may, for their determination, require oral or documentary evidence to be taken, hence such disputes cannot be considered appropriately in a writ petition by this Court under Article 226 of the Constitution of India and the remedy of the petitioner would lie elsewhere, i.e filing of an appeal under Section 92 of



the Act, 2016 against the impugned order dated 1.7.2025, which the learned counsel for the petitioner has refused to avail. Reference in this regard be had to the judgments rendered by the Hon'ble Apex Court in the case of *Thansingh Nathmal & others v. the Superintendent of Taxes, Dhubri & Ors.*, reported in *A.I.R. 1964 SC 1419*, the one reported in *(2020) 6 SCC 256 (Punjab National Bank and others v. Atmanand Singh and others.)*, the one reported in *(1974) 2 SCC 706 (Babubhai Muljibhai Patel v. Nandlal Khodidas Barot)* and the one rendered in the case of *Government of Andhra Pradesh vs. Thummala Krishna Rao & Anr.*, reported in *(1982) 2 SCC 134*.

15. Yet another aspect of the matter is that the petitioner has not taken recourse to the alternative remedy available under Section 92 of the Act, 2016 and has instead approached this Court directly by filing the present writ petition, which is not maintainable. It is a well-settled law that when a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India and this Rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion. Reference in this connection be had



to the judgments rendered by the Hon'ble Apex Court in the case of *Seth Chand Ratan Vs. Pandit Durga Prasad (D) By Lrs. & Others*, reported in (2003) 5 SCC 399, the one reported in (1974) 2 SCC 706 (*Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot & Others*), and the one rendered in the case of *Radha Krishan Industries vs. State of Himachal Pradesh & Ors.*, reported in (2021) 6 SCC 771.

16. As far as the judgment dated 16.5.2019 passed by a coordinate Bench of this Court in the case of *Rajesh Giri* (supra), referred to in the writ petition and relied upon for the purposes of release of the vehicle in question is concerned, firstly in the said case meager quantity i.e. 540 ml Indian made Foreign liquor had been recovered and secondly, no confiscation proceeding pertaining to the vehicle in question was pending, however in the present case, huge quantity of illicit liquor i.e. 350.250 liters has been recovered from the vehicle in question and moreover, by the impugned order dated 01.07.2025, the vehicle in question has already stood confiscated and has also been directed to be auction sold, hence the only efficacious remedy available to the petitioner is to challenge the said order dated 1.7.2025, by filing an appeal in terms of Section 92 of the Act, 2016.



17. Having regard to the facts and circumstances of the case and for the foregoing reasons, we do not find any merit in the present writ petition, hence the same stands dismissed.

(Mohit Kumar Shah, J)

(Arun Kumar Jha, J)

Ajay/-

| | |
|-------------------|------------|
| AFR/NAFR | AFR |
| CAV DATE | NA |
| Uploading Date | 01.04.2026 |
| Transmission Date | NA |

